

## **Assembly Bill No. 1160**

### **CHAPTER 62**

An act to add Section 2954.12 to the Civil Code, relating to deeds of trust.

[Approved by Governor July 14, 1997. Filed with  
Secretary of State July 14, 1997.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1160, Shelley. Deeds of trust.

Existing law authorizes a borrower under any note or evidence of indebtedness secured by a deed of trust or mortgage on specified real property to terminate future payments for specified private mortgage insurance or mortgage guaranty insurance, as defined, if several conditions are satisfied, except as otherwise provided.

This bill would, notwithstanding the above described provisions and except as specified, provide that the lender or servicer of the loan may not charge or collect future payments from a borrower for private mortgage insurance or mortgage guaranty insurance if specified conditions are met.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 2954.12 is added to the Civil Code, to read:

2954.12. (a) Notwithstanding Section 2954.7, and except when a statute, regulation, rule, or written guideline promulgated by an institutional third party applicable to notes or evidence of indebtedness secured by a deed of trust or mortgage purchased in whole or in part by an institutional third party specifically prohibits cancellation during the term of the indebtedness, the lender or servicer of a loan evidenced by a note or other evidence of indebtedness that is secured by a deed of trust or mortgage on the subject property may not charge or collect future payments from a borrower for private mortgage insurance or mortgage guaranty insurance as defined in subdivision (a) of Section 12640.02 of the Insurance Code, if all of the following conditions are satisfied:

(1) The loan is for personal, family, household, or purchase money purposes, the subject property is owner-occupied, one-to-four unit residential real property, and the outstanding principal balance of the note or evidence of indebtedness secured by the senior deed of trust or mortgage on the subject property is equal to or less than 75 percent of the lesser of (A) if the loan was made for purchase of the property, the sales price of the property under such purchase; or (B)

the appraised value of the property, as determined by the appraisal conducted in connection with the making of the loan.

(2) The borrower's scheduled payment of monthly installments of principal, interest, and escrow obligations is current at the time the right to cancellation of mortgage insurance accrues.

(3) During the 12 months prior to the date upon which the right to cancellation accrues, the borrower has not been assessed more than one late penalty for any scheduled payment and has not made any scheduled payment more than 30 days late.

(4) The loan evidenced by a note or evidence of indebtedness was made or executed on or after January 1, 1998.

(5) No notice of default has been recorded against the real property pursuant to Section 2924, as a result of a nonmonetary default on the extension of credit by the borrower during the last 12 months prior to the accrual of the borrower's right to cancellation.

(b) This section does not apply to any of the following:

(1) A note or evidence of indebtedness secured by a deed of trust or mortgage, or mortgage insurance, executed under the authority of Part 3 (commencing with Section 50900) or Part 4 (commencing with Section 51600) of Division 31 of the Health and Safety Code.

(2) Any note or evidence of indebtedness secured by a deed of trust or mortgage that is funded in whole or in part pursuant to authority granted by statute, regulation, or rule that, as a condition of that funding, prohibits or limits termination of payments for private mortgage insurance or mortgage guaranty insurance during the term of the indebtedness.

(c) If the note secured by the deed of trust or mortgage will be or has been sold in whole or in part to an institutional third party, adherence to the institutional third party's standards for termination of future payments for private mortgage insurance or mortgage guaranty insurance shall be deemed in compliance with the requirements of this section.

(d) For the purposes of this section, "institutional third party" means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association and other substantially similar institutions, whether public or private, provided the institutions establish and adhere to rules applicable to the right of cancellation of private mortgage insurance or mortgage guaranty insurance, which are the same or substantially the same as those utilized by the above-named institutions.

